



(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 219, and 252

RIN 0750-A142

**Defense Federal Acquisition Regulation Supplement: Advancing
Small Business Growth (DFARS Case 2014-D009)**

AGENCY: Defense Acquisition Regulations System, Department of
Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense
Federal Acquisition Regulation Supplement (DFARS) to clarify
that entering into a contract award may cause a small business
to eventually exceed the applicable small business size
standard.

DATES: Effective [Insert date of publication in the **FEDERAL
REGISTER**].

FOR FURTHER INFORMATION CONTACT: Ms. Lee Renna, telephone 571-
372-6095.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the Federal Register at 79 FR 65917 on November 6, 2014, to implement policy to ensure that a small business contractor is made aware that entering into a covered contract conveys its acknowledgement that doing so may cause it to eventually exceed the small business size standard of the North American Industry Classification System (NAICS) code identified in the solicitation and contract. This clarification is required by section 1611 of the National Defense Authorization Act for Fiscal Year 2014, Pub. L. 113-66, (10 U.S.C. 2419).

There were no public comments submitted in response to the proposed rule.

II. Discussion and Analysis

Minor editorial changes have been made from the proposed rule as follows: (1) In the heading at 219.303, the acronym "(NAICS)" was removed; (2) At DFARS 219.309, paragraph (a) was renumbered as paragraph (1), and a reference was changed from "\$70,000,000" to read "\$70 million"; and (3) DFARS 252.219-7000, paragraph (b), was revised slightly in the first sentence to reflect more standardized provision language and to spell out "NAICS" to reflect the North American Industry Classification System.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory

alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD has certified that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. This conclusion is based on the following:

This rule does not create or alleviate any financial burden on small businesses. The purpose of the rule is only to advise small businesses that entering into a DoD contract may eventually cause such businesses to exceed the small business size standard associated with the applicable NAICS code, and to encourage these businesses to develop the competencies typically desired of other than small businesses.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 212, 219, and 252

Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 219, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 212 and 252 continues to read as follows:

Authority: 41. U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

2. Amend section 212.301 by adding a new paragraph (f)(vi)(C) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(vi) * * *

(C) Use the provision at 252.219-7000, Advancing Small Business Growth, as prescribed in 219.309(1), to comply with 10 U.S.C. 2419.

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PART 219—SMALL BUSINESS PROGRAMS

3. The authority citation for 48 CFR part 219 is revised to read as follows:

Authority: 41. U.S.C. 1303 and 48 CFR chapter 1.

4. Amend section 219.303 by revising the section heading to read as follows:

219.303 Determining North American Industry Classification System codes and size standards.

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5. Add section 219.309 to subpart 219.3 to read as follows:

219.309 Solicitation provisions and contract clauses.

(1) Use the provision at 252.219-7000, Advancing Small Business Growth, in solicitations, including solicitations using FAR part 12 procedures for acquisition of commercial items, when the estimated annual value of the contract is expected to exceed—

(i) The small business size standard, if expressed in dollars, for the North American Industry Classification System (NAICS) code assigned by the contracting officer; or

(ii) \$70 million, if the small business size standard is expressed as number of employees for the NAICS code assigned by the contracting officer.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Add section 252.219-7000 to read as follows:

252.219-7000 Advancing Small Business Growth.

As prescribed in 219.309(1), use the following provision:

ADVANCING SMALL BUSINESS GROWTH (MAY 2015)

(a) This provision implements 10 U.S.C. 2419.

(b) The Offeror acknowledges by submission of its offer that by acceptance of the contract resulting from this solicitation, the Offeror may exceed the applicable small business size standard of the North American Industry Classification System (NAICS) code assigned to the contract and would no longer qualify as a small business concern for that NAICS code. (Small business size standards matched to industry NAICS codes are published by the Small Business Administration and are available at <http://www.sba.gov/content/table-small-business-size-standards>.)

The Offeror is therefore encouraged to develop the capabilities and characteristics typically desired in contractors that are competitive as other-than-small contractors in this industry.

(c) For procurement technical assistance, the Offeror may contact the nearest Procurement Technical Assistance Center (PTAC). PTAC locations are available at www.dla.mil/SmallBusiness/Pages/ptac.aspx.

(End of provision)